STATE OF MICHIGAN

COURT OF APPEALS

DAYNA SEMMLER KRATZER, Plaintiff-Appellant,	UNPUBLISHED May 20, 2003
v	No. 235336 Hillsdale Circuit Court
TAD LAMBRIGHT, Defendant-Appellee.	LC No. 00-000647-DP

Before: Whitbeck, C.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's petition to change the surname of the parties' minor child and assessing costs and attorney fees to plaintiff for asserting a frivolous defense. We affirm.

Plaintiff filed a complaint for order of filiation, seeking to establish that defendant was the natural father of her minor child, Jorey Marie Semmler. In response, defendant admitted that he was the father of the minor child and the parties agreed that they would have joint legal custody, with plaintiff having physical custody during the school year and defendant having parenting time for the entire summer. Before entry of an order setting out the terms of the parties' agreement, however, defendant filed a petition to change the name of the minor child from Jorey Marie Semmler to Jorey Marie Lambright. The petition, which was signed only by defendant and his attorney, stated that the minor child's mother's name was Dayna Kratzer and that, at that time, the child did not have the last name of either of her parents. Plaintiff opposed defendant's petition and thereafter filed a petition to change her own name from Dayna Semmler Kratzer (her married name) back to Dayna Semmler (her maiden name). After a hearing, the trial court entered an order granting defendant's request for the name change and assessing costs and attorney fees to plaintiff for filing a frivolous defense. Plaintiff appealed to this Court seeking a review of the order, but this Court dismissed the case for lack of jurisdiction because a final order had not been entered. The trial court thereafter entered a final order of filiation establishing defendant as the legal father of the minor child. Plaintiff now seeks review of the order authorizing the name change of the parties' minor child and assessing plaintiff costs and attorney fees.

Plaintiff argues that the trial court erred in granting the petition to change the minor child's last name because MCL 711.1(5) and (6) require that both parents sign such a petition and consent to the name change. We disagree.

"[P]arental disputes regarding a child's surname should be resolved in accordance with the best interests of the child." *Garling v Spiering*, 203 Mich App 1, 4; 512 NW2d 12 (1993). Although a trial court's grant of a petition for a minor child's name change is generally reviewed for an abuse of discretion, see *id*. at 3, whether the trial court could grant defendant's unilateral request to change the minor child's name despite the requirements of MCL 711.1 is a question of law that we review de novo, *Burba v Burba (After Remand)*, 461 Mich 637, 647; 610 NW2d 873 (2000). Upon such review, we find no error in the trial court's grant of the petition.

While plaintiff is correct that MCL 711.1 requires that both the minor child's mother and father consent to and jointly sign the petition for the minor child's name change, it is well-settled that "the statutory name change procedure in Michigan, [MCL 711.1], is not exclusive; it merely provides an additional method for effecting a name change as a matter of public record." *United States v Cox*, 593 F2d 46, 48 (CA 6, 1979). Indeed, this Court acknowledged the different methods of effectuating a name change in *Piotrowski v Piotrowski*, 71 Mich App 213, 216; 247 NW2d 354 (1976):

> In Michigan, as in most states, a statute authorizes procedures by which a court can, upon petition, change the name of any person. MCL 711.1. Such change of name statutes do not abrogate or supersede the common law. To the contrary, they affirm the common law right and afford *an additional method* by which a name change may be effected as a matter of public record. [(Emphasis added.)]

In the instant case, defendant did not petition the trial court to change his minor child's name pursuant to MCL 711.1, but rather, pursuant to common law. This Court recognized the difference between these alternative methods for changing one's name in *Rappleye v Rappleye*, 183 Mich App 396; 454 NW2d 231 (1990). There, the trial court entered an order that allowed the minor child, if she so desired, to continue informal use of the surname of her stepfather, which she had been using in recent years. *Id*. at 397-398. This Court affirmed the trial court's decision, stating:

> At common law a person could adopt any name he or she wished, without resort to any court and without legal proceedings, provided it was not done for fraudulent purposes. Similarly, the common law would permit a minor who was of sufficient age and maturity to make an intelligent choice to assume any chosen name. There is no contention in this case that Adria Rappleye's use of the surname Gregory was for a fraudulent purpose. If common law allows such use, we are hard pressed to conclude that the trial court erred by ordering nothing more than that which is permitted at common law.
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> *Again, we emphasize that we are not addressing a grant of a legal name change for the parties' minor child pursuant to the probate code*, a decision we would review for an abuse of discretion. Assuming that this is the correct standard in the

> present case, we cannot conclude on this record that the trial court abused its discretion by determining that it is in the minor child's best interest to allow her to continue using the name Gregory, if she so desires. Abuse of discretion implies that the trial court's decision was not based on fact, logic, and reason. In the present case, the trial court's decision was clearly based on the facts and on what was right and equitable under the circumstances. [*Id*. at 398-399 (Citations omitted.) (Emphasis added).]

The panel also noted that the trial court had interviewed the minor child to determine whether the use of the Gregory surname was being imposed for the purpose of frustrating the plaintiff father's relationship with his child and to foster ill feelings. *Id*. at 399-400. Similarly, in the instant case, the trial court specifically focused on the purpose of plaintiff's opposition to the name change, stating, "[t]his Court is getting the strong, strong feeling that [plaintiff] will do anything to drive a wedge between [defendant] and his daughter." Whereas the trial court in *Rappleye*, *supra*, felt that it was in the minor child's best interest that she be permitted to use her mother's new husband's surname if she so desired, the trial court in the instant case felt that it was in the child's best interest to have the same surname as her father. Plaintiff does not argue that this change of name was not in the child's best interest, and the trial court's statements at the hearing regarding the minor child's name change clearly indicate that it was aware of, and had considered, the best interests of the child in granting defendant's petition. We find no error in this conclusion.

Plaintiff also argues that the trial court erred in assessing costs and attorney fees against her as a sanction for filing a frivolous defense. This Court will not disturb a trial court's finding that a claim was frivolous unless the finding is clearly erroneous. *In re Atty Fees & Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999). A trial court's decision is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id*.

Although the trial court did not expressly state so on the record, it is clear from the context that the sanctions were imposed on the basis that plaintiff had asserted a frivolous defense to defendant's petition. MCR 2.114(F) provides that "in addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2)." MCR 2.625(A)(2) refers a trial court awarding sanctions for a frivolous defense to MCL 600.2591, which provides that if a court finds that a defense to a civil action was frivolous, the court that conducts the civil action shall assess costs and fees against the nonprevailing party. MCL 600.2591(1). A defense is considered frivolous if, among other things, "[t]he party's primary purpose in . . . asserting the defense was to harass, embarrass, or injure the prevailing party." MCL 600.2591(3)(a)(i).

In the instant case, it is evident from the trial court's statements at the hearing that it felt plaintiff's primary purpose in asserting the defense was to harass, embarrass, or injure the prevailing party, in contravention of the prohibition on asserting frivolous defenses, pursuant to MCL 600.2591(3)(a)(i). The trial court focused on the fact that immediately after defendant filed the petition to have his minor child's surname changed to his surname, plaintiff took action to have her married name changed back to her maiden name, so that it would be the same as the

minor child's surname. The trial court noted that plaintiff's action was "unconscionable," which indicates that the trial court found plaintiff's defense was frivolous, and was only asserted to harass defendant. This finding was not clearly erroneous. Therefore, the trial court did not err in sanctioning plaintiff for asserting a frivolous defense under MCR 2.114(F).

We affirm.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra